

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants,

DIANA MARTINEZ, et al.,

Defendant-Intervenors,

and

COUNTY OF SANTA CLARA,
CALIFORNIA, et al.,

Defendant-Intervenors,

and

STATE OF NEW YORK, et al.,

Defendant-Intervenors.

Case No. 2:18-cv-00772-RDP

**UNOPPOSED JOINT MOTION FOR EXTENSION OF TIME TO RESPOND TO
PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE**

Defendant-Intervenors the State of New York, *et al.* ("State and other Government Defendant-Intervenors"), Defendant-Intervenors County of Santa Clara, California, *et al.* ("Local Government Defendant-Intervenors"), the Martinez Defendant-Intervenors, and the federal defendants (collectively, the "Movants") respectfully move this Court for a six-day extension of time to respond to Plaintiffs' Response to the Court's January 8, 2021 Show Cause Order (Doc.

204) (“Response”), from February 11, 2021 to February 17, 2021. Plaintiffs, through counsel, have advised Movants that they do not oppose this motion. In support of this motion, the Movants state the following:

1. On January 8, 2021, this Court ordered Plaintiffs to show cause “why the injuries they allege are more than just ‘predictions.’” Order, at 3 (Doc. # 195). The Court ordered Plaintiffs to show cause “[o]n or before February 10, 2021 or within seven (7) days of the delivery of the apportionment count, whichever occurs earlier.” *Id.* The Court further ordered that “[a]ny other party wishing to brief the court on this issue or respond to Plaintiffs SHALL submit briefing on or before February 17, 2021 or seven (7) Days from Plaintiffs’ filing of its Show Cause response, whichever occurs earlier.” *Id.*

2. By text order (Doc. # 204), dated January 29, 2021, the Court further directed the Parties to “also address the implications of [President Biden’s] Executive Order [titled Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census], particularly as it relates to the question of whether a ruling on the propriety of the Census Bureau[’]s Residence Rule would redress (i.e., cure) the injury claimed by Plaintiffs” in their submissions in response to the Court’s January 8 order to show cause.

3. Plaintiffs filed their Response on February 4, 2021, six days before their February 10, 2021 deadline.¹ Accordingly, under the Court’s January 8 Order, the other parties’ responses are due on February 11, 2021.

¹ The Census Bureau has not yet released apportionment data. On January 28, 2021, the Bureau released a statement that “[o]ur current schedule points to April 30, 2021, for the completion of the apportionment counts.” U.S. Census Bureau, Press Release, *Census Bureau Statement on Apportionment Counts* (Jan. 28, 2021), available at <https://www.census.gov/newsroom/press-releases/2021/statement-apportionment-counts.html>.

4. In support of their Response, Plaintiffs submitted a Sworn Declaration and Second Supplemental Expert Report of Dudley L. Poston, Jr., Ph.D. (Doc. # 204-1) (“Poston Second Supp. Report”). Dr. Poston’s second supplemental report uses (1) updated estimates from the U.S. Census Bureau to develop estimates of the resident populations of the 50 states for April 1, 2020 and then use those estimates to predict the apportionment of House seats; and (2) recent estimates by the Center for Migration Studies of the population of undocumented persons in the states “to examine the effect excluding undocumented persons from the apportionment population would have on the apportionment of Congressional seats among the states.” Poston Second Supp. Report at 2.

5. Plaintiffs also submitted a press release issued on December 22, 2020 by one of Defendant-Intervenors’ expert witnesses, Kimball W. Brace of Election Data Services, as an exhibit to their submission. Exhibit C: Electronic Data Services Report (Doc. # 204-3). The press release contains Mr. Brace’s analysis of Census Bureau population estimates released in December 2020 and their potential effect on the apportionment of Congressional seats.

6. Having reviewed Plaintiffs’ Response and the above-referenced exhibits, the State and other Government Defendant-Intervenors have determined that it is necessary for their expert witnesses to review and, if necessary, respond to or rebut Dr. Poston’s latest analysis through one or more supplemental declarations.

7. On February 5, 2021, counsel for the State and other Government Defendant-Intervenors spoke with their expert witness, Dr. Sunshine Hillygus, about Dr. Poston’s second supplemental report. Dr. Hillygus has reviewed Dr. Poston’s report and is preparing a rebuttal declaration. However, due to her teaching schedule and other commitments, Dr. Hillygus will likely be unable to finalize any necessary rebuttal declaration by the State and other Government

Defendant-Intervenors' February 11 response deadline. Dr. Hillygus will be able to finalize any necessary declaration by the requested February 17 deadline.

8. On February 5, counsel for the Martinez Defendant-Intervenors contacted Mr. Brace about preparing a supplemental declaration. Mr. Brace is reviewing Dr. Poston's report and may potentially prepare a rebuttal declaration. Due to previous commitments and deadlines, however, Mr. Brace is unlikely able to finalize his review and any necessary rebuttal declaration by February 11.

9. The federal defendants request that their deadline also be extended to February 17 to ensure adequate time to review Plaintiffs' submission and the accompanying declaration and coordinate the federal defendants' response.

10. In order to determine their response to Plaintiffs' submission, Local Government Intervenors need to review Dr. Hillygus and Mr. Brace's supplemental responses, if any, and therefore respectfully join in this motion for an extension of time.

11. The Movants' requested six-day extension will not prejudice any party or unduly delay proceedings in this case. The requested deadline, February 17, would have been the deadline for responsive briefing if Plaintiffs had filed their response to the Court's show cause order on their original deadline of February 10. Thus, briefing will be completed on the schedule originally contemplated by the Court.

12. The Martinez Defendant-Intervenors support this motion so long as the extension is not interpreted as obviating the need for further discovery, including expert discovery, and full briefing on the jurisdiction and merits issues in this case.

Based on the foregoing, the Movants respectfully request that the Court extend their deadline to respond to Plaintiffs' response from February 11 to February 17, 2021.

DATED: February 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2021, I electronically filed the foregoing Unopposed Joint Motion for Extension of Time to Respond to Plaintiffs' Response to Order to Show Cause with the Clerk of the Court and served using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Joseph J. Wardenski
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